



POLICE DEPARTMENT

November 27, 2007

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Jon-Michael Luisi
Tax Registry No. 904399
104 Precinct
Disciplinary Case No. 82586/07

The above-named¹ member of the Department appeared before me on August 13, 2007, charged with the following:

1. Said Police Officer JonMichael Luisi, assigned to the 104 Precinct, while off-duty, on or about July 18, 2006, at a location known to this Department, in Queens County, having no right to do so nor any reasonable ground to believe that he had such right, did intentionally damage property of another person, identity known to this Department, in that said Officer did wrongfully damage a statue, an armoire, and a television belonging to said person.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 145.00(1) – CRIMINAL MISCHIEF
IN THE FOURTH DEGREE

2. Said Police Officer JonMichael Luisi, assigned to the 104 Precinct, while off-duty, on or about July 18, 2006, at a location known to this Department, in Queens County, having been involved in a police incident, did thereafter fail to promptly notify the desk officer, precinct of occurrence, as required.

P.G. 212-32, Page 1, Paragraph 2 – COMMAND OPERATIONS

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

¹ Although the Respondent's first name is spelled JonMichael in the Charges and Specifications, he testified (and Department records indicate) that the correct spelling of the name is Jon-Michael.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A copy of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

EVIDENCE IN MITIGATION

The Respondent, a 14-year member of the Department, is currently assigned to Patrol Borough Queens North. Because he is currently on modified duty status, his job duties are limited to plant maintenance functions. The Respondent spent the first 13 years of his career at the 104 Precinct. Ten of those years were spent in uniformed patrol.

The Respondent testified that in July 2006, his primary residence was on [REDACTED], but he spent five or six days a week at [REDACTED]'s house in Queens. At the time, he and [REDACTED] had been dating for approximately a year and a half. On July 18, 2006, he and [REDACTED] went out to dinner together. [REDACTED] drove them to the restaurant in her car. On the way home, the Respondent and [REDACTED] started to have an argument over a friend who had just called the Respondent on the telephone. The Respondent and [REDACTED] were yelling at each other. At one point, they stopped at a gas station so that the Respondent could purchase a beverage. While the Respondent was inside the gas station, [REDACTED] drove away. When the Respondent called [REDACTED] on the telephone, [REDACTED] informed him that she was not coming back to pick him up. The Respondent told [REDACTED] that if she did not pick him up, he was going to break up with her.

The Respondent ultimately took a car service back to [REDACTED]'s house. The ride cost him \$75.00 or \$85.00. The Respondent explained that he planned to retrieve some of his belongings from [REDACTED]'s house and then leave.

[REDACTED] let the Respondent into the house. [REDACTED]'s sister was there at the time, along with her boyfriend and nine-year-old daughter. The Respondent and [REDACTED] went to the bedroom, and the Respondent proceeded to take his clothes out of the dresser. Earlier in the day, the Respondent had given [REDACTED] earrings. When the Respondent asked for the earrings back, [REDACTED] refused to give them to him. [REDACTED] then asked the Respondent to give back a set of house keys that she had given him. The Respondent replied that he would give back the keys if she gave back the earrings. The Respondent testified that when [REDACTED] refused again to give back the earrings, he "foolishly and out of frustration" threw a small statue onto the bed. The statue bounced off of the bed and hit the television, cracking the television frame. The statue then ricocheted off of the television and hit an armoire, cracking the armoire's mirrored door. The statue broke. At no point did the statue ever hit [REDACTED] or anybody else in the house.

The Respondent then walked out of the room to cool off. He and [REDACTED]'s sister's boyfriend discussed the situation. He gave the boyfriend the keys that [REDACTED] wanted, and he asked the boyfriend to get the earrings from [REDACTED] in return. The boyfriend brought the earrings to the Respondent, and the Respondent left the premises. The Respondent explained that he knew it was foolish to throw the statue and he never should have done it. He further explained that he threw the statue out of frustration, and he did not think he was going to cause damage when he threw it on the bed.

Later that night, the Respondent was summoned to the 107 Precinct Station House, where he was placed on modified duty status. He has been modified ever since. The Respondent testified that he did not know when he left [REDACTED]'s house that night that 911 had been called. The Respondent stated that in any case he should have reported the incident to the Department immediately after it occurred. He was never arrested for his conduct. The Respondent and [REDACTED] reconciled and are still in a relationship today. They have not had any further incidents. The television that was damaged by the statue still works. The armoire has a small crack on the bottom of the door, but [REDACTED] still uses it.

On cross-examination, the Respondent testified that he heard [REDACTED] tell her sister to call 911. The Respondent explained that he thought [REDACTED] was joking because [REDACTED] had joked before about calling 911 and getting him in trouble. Both the Respondent and [REDACTED] consumed a few drinks at dinner.

On redirect examination, the Respondent testified that he was not found unfit for duty.

Upon questioning from the Court, the Respondent testified that the statue he threw was a bust of Dale Earnhardt on a base that was three or four inches around.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on August 30, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pleaded Guilty to intentionally damaging [REDACTED]'s statue, armoire, and television. He has also pleaded Guilty to failing to promptly notify the desk officer, precinct of occurrence, of the incident. The Respondent testified that during a disagreement with [REDACTED], he "foolishly and out of frustration" threw a small statue onto the bed. The statue bounced off of the bed, ultimately hitting the television and armoire. As a result, the statue broke, the television frame cracked, and the armoire's mirrored door also cracked. The damage was so minor, however, that the television still functions, and [REDACTED] still uses the armoire today. The Respondent explained that he knows he should not have thrown the statue, and he did not think he was going to cause damage when he threw it on the bed. He conceded that he should have reported the incident to the Department immediately after it occurred.

In mitigation of this matter, the Respondent testified credibly and expressed remorse for his actions. Other mitigating factors include the fact that the resulting property damage was minimal and inadvertent; the Respondent did not use physical force against [REDACTED] and nobody at the scene sustained physical injury; the Respondent and [REDACTED] have reconciled, and there is no evidence of them having had any sort of domestic incident either before or since July 18, 2006; the Respondent was not arrested; and the Respondent has been on modified duty status for almost a year and a half.

While the Assistant Department Advocate suggested that the Respondent receive a penalty of twenty vacation days, the Respondent's attorney suggested a penalty of half

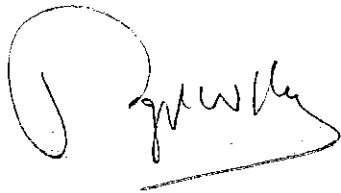
that length. Prior criminal mischief cases all dealt with incidents of property damage much more severe and intentional than the damage caused by the Respondent in the current case.² In consideration of the Respondent's service record, along with the minor and isolated nature of this incident, the Court recommends that the Respondent forfeit ten vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials



² For example, the Assistant Department Advocate cited two cases in his closing argument: Disciplinary Case No. 81812'06, in which a probationary police officer forfeited 30 vacation days for breaking his ex-girlfriend's car window; and Disciplinary Case No. 78829'03, in which a nine-year member with no prior disciplinary record forfeited 32 suspension days already served for breaking several household items during the course of an altercation with his girlfriend.